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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Florinda Garcia Rivera and Felipe Carrera
Mendez,

Plaintiffs,

v.

Loren K. Miller, Director, Nebraska Service
Center, U.S. Citizenship and Immigration
Services, in his official capacity as well as his
successor and assigns; Alejandro Mayorkas,
Secretary, U.S. Department of Homeland
Security, in his official capacity as well as his
successors and assigns; Ur Mendoza Jaddou,
Director, U.S. Citizenship and Immigration
Services, in her official capacity as well as her
successor and assigns; Antony J. Blinken,
Secretary of State, U.S. Department of State,
in his official capacity as well as his successors
and assigns; Philip Slaterry, Director National
Visa Center, U.S. Department of State, in his
official capacity as well as his successors and
assigns; Richard C. Visek, Acting Legal
Advisor, U.S. Department of State, in his
official capacity as well as his successor and
assigns,

Defendants.

Case No. 2:23-cv-00724-APG-EJY

Stipulation to Stay Case

Plaintiffs Florinda Garcia Rivera and Felipe Carrera Mendez ("Plaintiffs") and
Federal Defendants, through counsel, submit the following stipulated statement and order
("Stipulation") to stay proceedings in this matter.

1 1. On May 8, 2023, Plaintiffs filed the Complaint. (ECF No. 1).

2 2. Federal Defendants have an Answer due on August 15, 2023. Federal
3 Defendants have yet to file an Answer or, alternatively, file a motion to dismiss on the basis
4 that this Court lacks subject matter jurisdiction over this action.

5 3. On July 7, 2023, in a separate case, *Mercado, et. al v. Miller, et. al.*, No. 2:22-cv-
6 02182-JAD-EJY, 2023 WL 4406292 (D. Nev. July 7, 2023), ECF No. 18, the United States
7 District Court for the District of Nevada granted a motion to dismiss a substantially similar
8 case alleging unreasonable delay in the processing of a provisional unlawful presence waiver
9 for lack of subject matter jurisdiction pursuant to 8 U.S.C. § 1182(a)(9)(B)(v). *Mercado*, 2023
10 WL 4406292, at *1-3. The Mercado plaintiffs sought “declaratory and injunctive relief
11 under the . . . APA . . . and a writ of mandamus ordering . . . USCIS . . . to complete its
12 adjudication of Gustavo Mercado’s I-601A application for a provisional-unlawful-presence
13 waiver and the Department of State (DOS) to schedule his consular visa interview.” *Id.* at
14 *1. As to the three U.S. Department of Homeland Security officials who the *Mercado*
15 plaintiffs sued, the District of Nevada granted Defendants’ motion to dismiss on the grounds
16 that “§ 1182(a)(9)(B)(v) precludes judicial review of USCIS’s alleged delay in processing
17 Gustavo’s I-601A application” *Id.* at *3.

18 4. On July 12, 2023, the *Mercado* plaintiffs noticed an appeal. *Mercado, et. al. v.*
19 *Miller, et. al.*, No. 2:22-cv-02182-JAD-EJY, ECF No. 20 (D. Nev.), which the Ninth Circuit
20 has docketed as Case No. 23-16007. Pursuant to the Time Scheduling Order, which the
21 Ninth Circuit issued on July 17, 2023, the *Mercado* Plaintiffs-Appellants’ opening brief is due
22 by September 18, 2023; the *Mercado* Defendants-Appellees’ answering brief is due by
23 October 18, 2023; and the *Mercado* Plaintiffs-Appellants’ optional reply brief is due within 21
24 days of the filing of Defendants-Appellees’ answering brief. *Mercado, et. al. v. Miller, et. al.*,
25 No. 23-16007, Doc. No. 1-1 at 3 (9th Cir.). Consequently, the precise question concerning
26 this Court’s subject matter jurisdiction which is at issue in this case is now before the Ninth
27 Circuit in an appeal scheduled to be fully briefed by November 8, 2023.
28

5. On July 25, 2023, counsel for the Parties conferred over email in which Defendants asked to stay this case pending a resolution by the U.S. Court of Appeals for the Ninth Circuit (the “Ninth Circuit”) of the appeal in *Mercado, et. al. v. Miller, et. al.*, No. 23-16007 (9th Cir.), which, as stated above, involves the precise question concerning this Court’s subject matter jurisdiction that is at issue, rather than file another motion to dismiss, which it has done in other 601-A cases. Plaintiff’s counsel agreed with this request.

6. Counsel for the parties agree that a stay would preserve the resources of the Court and the parties, allow the parties to avoid the risk of inconsistent judgments, and would be of limited duration.

7. The Parties now hereby agree and stipulate to stay this case pending resolution of the *Mercado* appeal.

Respectfully submitted this 2nd day of August 2023.

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The parties shall file a status report every 6 months or within 60 days of a decision in *Mercado v. Miller*, whichever comes first.

IT IS SO ORDERED:



UNITED STATES DISTRICT JUDGE

DATED: August 3, 2023